

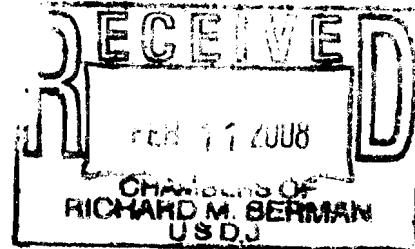
## LEDY-GURREN BASS &amp; SIFF, L.L.P.

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## MEMO ENDORSED

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February 8, 2008

Hon. Richard M. Berman  
 United States District Court  
 Southern District of New York  
 United States Courthouse  
 500 Pearl Street  
 New York, New York 10007

**Re:** *Drayton v. Toys "R" US, et. al.*  
**1:07-cv-06315-RMB-JCF**

Dear Judge Berman:

We are the attorneys for the Toys "R" US defendants in the above-captioned putative class action, and we seek your guidance and assistance with respect to the issue of an amended complaint in this action which, as of today at 5:30 p.m., still has not been served by plaintiffs' counsel, despite the Court's firm directive that it be served by February 7. For the reasons that follow, we are respectfully requesting that plaintiffs be precluded from filing an amended complaint, and advise the Court that we shall proceed with the filing of a motion to dismiss on the grounds previously communicated to Your Honor. We trust that this serves as compliance with the Court's directive that we notify of our intention by February 8.

During our initial conference before Your Honor in October, 2007, the Court set forth a schedule whereby plaintiffs were (1) given time to respond to the defense's distinct letters outlining the bases for a proposed motion to dismiss, and (2) directed to serve an amended complaint (with the proviso that there would be but a single amendment after which any dismissal of causes of action would be dismissed with prejudice) by November 27, 2007. No amended complaint was served, and our re-scheduled conferences for December were ultimately put off due to the Court's enormous schedule until January 29, 2008. At that time, the Court allowed plaintiffs until February 7, 2008 to serve an amended complaint (indicating that we should also commence discovery). Plaintiffs have only notified us that they purportedly intend to join at least 10-12 parties.

Via Federal Express

Application denied. PL appears  
to have filed on 2/7/08.

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**SO ORDERED:**  
**Date: 2/11/08** *Richard A. Berman*

Richard M. Berman, U.S.D.J.

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 DATE FILED: 2-11-08

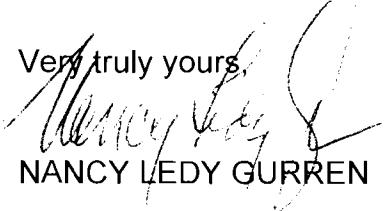
**LEDY-GURREN BASS & SIFF, L.L.P.**

Hon. Richard M. Berman  
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On February 7, 2008, we e-mailed plaintiffs' counsel during the mid-day hours, requesting that they serve the amended complaint during business hours. Mr. Roy responded, indicating that the amended complaint would be served by the deadline. At the close of business on February 7, I sent a letter (by e-mail and regular mail), again requesting the amended pleading, and informing counsel that we would like to give the matter substantive thought before advising Your Honor as to the dimensions of a proposed motion to dismiss. A copy of that letter is annexed. My notes from the conference indicate that we were constrained to communicate to the Court by today of our intentions vis-a-vis the amended complaint.

We thank the Court for its consideration.

Very truly yours,  
  
NANCY LEDY GURREN

NLG: smr

cc: Ron Cherry, Esq. (Cherry & Jenifer)  
Emmanuel Roy, Esq. (Roy & Associates)  
K.C. Okoli, Esq.  
Thomas Catalano, Esq. (Lester, Schwab)  
(With attachments via Federal Express)

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February 7, 2008

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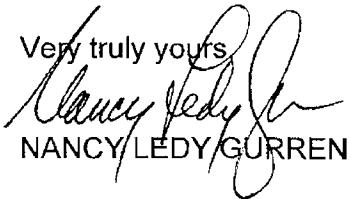
K.C. Okoli  
330 Seventh Avenue  
15<sup>th</sup> Floor  
New York, New York 10001

**Re: *Drayton v. Toys "R" US, et.al.***  
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Dear Messrs. Roy and Okoli:

As a follow-up to my e-mail of this morning, I wish to note that it is now after 5:00 p.m., and we have yet to receive a copy of the Amended Complaint that is to be served today. I am somewhat disappointed in the late service, as we are required to review your Amended Complaint, and draft a letter of intention to Judge Berman regarding any motion to dismiss by tomorrow; clearly, you have left the defendants precious little time to make a thoughtful determination on that score. The same sequence occurred with respect to last Friday's information, which was e-mailed to me quite late in the evening, well past the close of business.

I would be most appreciative if you would promptly correct this situation.

Very truly yours,  
  
NANCY LEDY GURREN

cc: Lester Schwab Katz & Dwyer